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2023:PHHC:048408

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP-15930-2014

Date of Decision: 16.03.2023

NARENDER KUMAR

.... Petitioner

Versus

STATE OF HARYANA & ORS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Suman Jain, Advocate, for the petitioner.

Mr. Anant Kataria, DAG, Haryana, for respondents No.1 to 4.

Mr. Padamkant Dwivedi, Advocate, for respondent No.5.

JAISHREE THAKUR.J

1. The petitioner herein seeks a writ in the nature of mandamus directing respondents No.1 to 4 to deposit the amount of his leave salary, pension contribution, gratuity and GPF etc. with up-to-date interest for the period w.e.f. 04.12.1997 to 17.09.2007 with respondent No.5. He has also sought direction to respondent No.5 to allot/open GPF account either under old pension scheme or to continue with the old GPF number.

2. The brief facts of the case are that the petitioner was appointed as Science Master in the Government School on 04.12.1997 and worked as such till 17.09.2007 at GMS, Jat Bhurthal, District Rewari. Thereafter, he applied through proper channel for the post of Assistant Secretary in Haryana State Agricultural Marketing Board i.e. respondent No.5. He was selected and accordingly, appointment letter was issued to him on 20.08.2007. He

submitted his technical resignation to respondent No.2-Director, Elementary Education, Haryana Shiksha Sadan, Panchkula and the same was forwarded through proper channel on 17.09.2007 and he was relieved on the same day in the afternoon. At the time of relieving of the charge, he also submitted NOC and requested that his lien be kept with the department. It is submitted that inspite of the fact that the technical resignation was submitted on 17.09.2007, respondent No.4-Block Education Officer, Rewari, forwarded the same to respondent No.3-District Education Officer, Rewari, on 21.07.2008, and further it was forwarded to respondent No.1-Principal Secretary to Government Haryana, Education Department, on 10.09.2008. On 06.11.2008, respondent No.5-Board wrote to respondent No.2 to supply copy of technical resignation duly accepted by the competent authority and to deposit the amount of leave salary, pension contribution, gratuity and GPF etc. along with interest to their office. Simultaneously, petitioner was also pursuing his matter before respondent No.5 for issuing GPF account so that if any amount for the period in question is released in his favour, that may be credited in that account. It is contended that the petitioner kept requesting respondents No.1 to 4 to supply order of acceptance of technical resignation and to release the past service benefits, but of no consequence. Even respondent No.5 failed to continue with the old GPF account and not opening the new one. Left with no other option, petitioner served a legal notice dated 24.09.2013 as well. In September, 2013 itself, the petitioner received a bank draft amounting to Rs.2,06,922/- from respondents No.1 to 4, but since new GPF account was not opened, the said draft was cancelled.

3. Counsel appearing on behalf of the petitioner would contend that the act of respondents No.1 to 4 in not releasing the past service benefits to the petitioner, is highly arbitrary and illegal. In support of his contentions, he has relied upon judgment of this Court in ***CWP No.15958 of 2014, Ram Mehar Singh Versus State of Haryana and others, decided on 26.04.2017*** wherein same benefits have been allowed to the petitioner therein, who had been appointed along with the petitioner under the same advertisement and working in the same department.

4. *Per contra*, learned counsel appearing on behalf of respondents No.1 to 4 would contend that the petitioner neither applied through proper channel for the post of Assistant Secretary under the Haryana State Agriculture Marketing Board (HSAMB) nor did resign the post of Science Master before joining his new service, and therefore, statutory conditions have not been fulfilled to declare his relieving from the department as “*technical resignation*”. It is submitted that NOC can be issued by the Appointing Authority or the Disciplinary Authority only, and the Incharge /Head Master, Government Middle School, Jat Bhurthal, Rewari, had no such competency to issue NOC. The relieving report, as issued, nowhere says that the petitioner had submitted a technical resignation from the post of Science Master. It is further submitted that GPF claim of the petitioner was considered and a cheque amounting to Rs.2,06,922/- dated 07.09.2013 was issued, but due to non-availability of GPF number of the petitioner, it was cancelled. Further, his claim for pension was denied on the ground that he had not served the department for a minimum statutory period of 10 years as provided in Chapter-VI of the Punjab Civil Services Rules, Vol. II. The

petitioner has tried to play a mischief to gain advantageous benefits of his previous service in Education Department, Haryana.

5. Counsel appearing on behalf of respondent No.5 would argue that respondent No.2 was requested twice to send the order regarding acceptance of technical resignation of the petitioner and to deposit the amount towards the pension liabilities of the petitioner but when no reply was received from the Education Department, his case could not be processed.

6. I have heard learned counsel for the petitioner as well as learned counsel for the respondents and have gone through the pleadings of the case.

7. Admittedly, the petitioner before joining as Assistant Secretary with respondent No.5-Board, was relieved vide relieving report dated 17.09.2007 (Annexure P-3) which was issued by the In-charge /Head Master, Government Middle School, Jat Bhurthal, Rewari, who as per the respondents No.1 to 4 was not competent to do so. However, this argument would not be sustainable in view of the fact that the copy of Annexure P3 as appended with the writ petition would reflect that the relieving letter had been duly countersigned by the District Education Officer Rewari. It is also not in dispute that the petitioner, working as a teacher in Rewari, had applied for the post of Assistant Secretary with the HSAMB through proper channel, as would be evident that his application was forwarded by the District Education Officer, Rewari. The technical resignation dated 22.06.2007 under Rule 3.17 (a) (2) CSR, Vol. I specifically asked for the lien to be retained, and the relieving letter dated 17.09.2007 also noticed that lien had been retained. The Block Education Officer for some reason did not forward the

technical resignation of the petitioner for a year and the petitioner cannot be faulted for the same despite several request. Eventually the District Education Officer did so on 10.9.2008. The petitioner has been made to run from pillar to post to have the benefits of his past service released to him which he was entitled to. Rule 3.17-A (1) of the Punjab Civil Services Rules, Volume-II, Part-1 (as applicable to Haryana) provides that all service rendered on establishment, interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service. The respondent HSAMB was willing to accept the technical resignation which was never forwarded to it, and now on receipt of the same, cannot be permitted to deny the petitioner benefits of his past service rendered with the Education Department towards computing his pension and all other benefits that would accrue along with gratuity etc.

8. In ***Ram Mehar Singh (supra)***, this Court has allowed the writ petition under similar circumstances of the petitioner therein who was appointed along with the petitioner as Assistant Secretary and was earlier serving as a teacher. His resignation with the Education Department was also not forwarded in time forcing him to approach the High Court and vide order dated 26.04.2017 directions were issued to the following effect:-

“Respondents are directed to transmit all the payments which have been sanctioned alongwith the applicable up to date interest to the respondent-HSAMB within 3 months from the date of received of certified copy of this order. As regards the pension

respondents No. 1 to 3 would be bound to release their share of the pension of the petitioner on his retirement.”

9. Consequently, the instant writ petition is allowed and the respondent No.5-HSAMB is directed to count the service rendered with respondents No.1 to 4 who will deposit the amount of leave salary, pension contribution, GPF etc. for the period of 04.12.1997 to 17.09.2007 along with interest @ 7% per annum for the period the petitioner worked as Science Master, with respondent No.5. Respondent No.5 will either allot a new GPF number to the petitioner or continue on the old one. The needful will be done within a period of three months from receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

16.03.2023

sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No